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EXAMINER

KENEALY, D

FBM1/1129

ART UNIT

PAPER NUMBER

13

EDWARD R. WEBER
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0301
DATE MAILED:

11/29/94

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 9/15/94 This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892. 2. Notice of Draftsman's Patent Drawing Review, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449. 4. Notice of Informal Patent Application, PTO-152.
5. Information on How to Effect Drawing Changes, PTO-1474. 6.

Part II SUMMARY OF ACTION

1. Claims 1, 3-22 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 1, 3-22 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.

8. Formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).

10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).

12. Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

EXAMINER'S ACTION

Applicant should note a possible typo at line 6 of claim 20 where it is believed that "removable" should be "removably".

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3,4,6,8,14-16 and 22 are rejected under 35 U.S.C. § 102(b) as being anticipated by Laguerre, British Patent 1,061,321 for the reasons stated in the 6/24/94 Office action.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 7,9,11-13,17,19 are rejected under 35 U.S.C. § 103 as being unpatentable over Laguerre in view of Barker, GB patent 2,039,406 for the reasons as stated in the 6/24/94 Office action.

Claims 5,10 and 18 are rejected under 35 U.S.C. § 103 as being unpatentable over Rubin in view of McCosker and Favery for the reasons stated in the 6/24/94 Office action.

Claims 20 and 21 are rejected under 35 U.S.C. § 103 as being unpatentable over Rubin in view of McCosker and Favery and further in view of Kvare. Kvare teaches the use of a two ply bag type article placed over a hand held frame to shield a user's face. It would have been obvious to have provided this two ply construction in the Rubin device to help support it on a hand held frame.

RESPONSE TO APPLICANT'S REMARKS

With respect to applicant's method claims, examiner would favorably consider an amendment that made the claims read more like a method claim. For example, suggested changes would be to claim a method of 1) providing a membrane..., providing a frame..., placing the membrane over the frame, interposing the device in front of the kissing person, and finally kissing an object with the device in position. As the claim stands the only real step of the method is the act of interposing a structure in front of a kissing person. The claim then recites the structural requirements of the invention similar to a typical structural claim for an apparatus. It is requested that applicant keep this structural description in the claims while organizing the use of the structure in a number of prescribed methodic steps.

Examiner does not agree with applicant's assertion that Laguerre does not disclose everything in applicant's claims 1-4,6,8,14-16 and 22. Applicant argues that the Laguerre device is not "formable" or "contoured". The term formable is an adjective describing the type of frame and does not explicitly require a specific material for the frame portion. As long as Laguerre's device can be considered "formable" to any degree it will meet such a limitation. Laguerre's device is formable to at least some degree as evidenced in the specification at column 2 line 1 which states that the legs of the frame "are adapted to be slightly bent in towards each other when capped by a transparent bag". The limitation that the frame portion be "contoured inwardly towards the face of the user" is also a very broad limitation requiring only some sort of contour be present in the device. Applicant does not define the contour relative to the device itself, which would possibly define the limitation that applicant argues exists in the present claim language. Therefore, examiner believes that the contour existing at the joining of shelf portion 2a to the leg portions 3a and 4a provides the contour limitation as claimed.

Applicant also argues that the Laguerre reference is not a "continuous" frame. The Laguerre frame is made from a unitary piece of material and thus can be considered "continuous" in the same sense as applicant's unitary frame is continuous.

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THIS ACTION IS MADE FINAL. See M.P.E.P. § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Kenealy whose telephone number is (703) 308-2680.

DK
David J. Kenealy
November 28, 1994

Robert A. Hafer
ROBERT A. HAFER
S.P.E.
ART UNIT 331